

PT 01-24

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

ANDERSON GARDENS)		
)	A. H. Docket #	99-PT-0031
Applicant)		
v.)		
)	Docket #	98-101-143
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)	PINs. #	11-13-279-007
)		12-18-151-001 (Part of)
)		12-18-152-001 (Part of)

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Scott C. Sullivan, attorney at law, and Mr. Daniel A. Dunn, Jr. attorney at law appeared on behalf of Anderson Gardens. Mr. Jim Day, Special Assistant Attorney General, appeared on behalf of the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on December 7, 2000, to determine whether or not Winnebago County Parcel Index No. 11-13-279-007, the Anderson Center located on Winnebago County Parcel Index No. 12-18-152-001 (Part of), and the Visitor's Center and the 16th Century Guesthouse located on Winnebago County Parcel Index No. 12-18-151-001 (Part of) qualified for exemption during all or part of the 1998-assessment year.

The three parcels here in issue contain approximately 4.79 acres and are part of a Public Heritage Garden in the style of a Japanese Pond-Strolling Garden.

The Department has determined that Anderson Gardens owned the three parcels here in issue pursuant to a trustee's deed conveying the properties to the applicant on May 29, 1998. The Department has determined that Anderson Gardens is a charitable organization as evidenced by the Non-homestead Property Tax Exemption Certificate issued in this matter.

Mr. Linwood Fredericksen, executive director of Anderson Gardens, (hereinafter referred as the "Applicant") and Mr. Duane Bach, CPA, chief financial officer of Anderson Enterprises, and also a member of the board of directors and treasurer of applicant were present and testified on behalf of the applicant.

The issues in this matter include whether the Anderson Center and the land on which it stands, the Visitor's Center and the land on which it stands, and the 16th Century Guesthouse and the land on which it stands were used for charitable purposes during the period May 29, 1998, through December 31, 1998.

Based on the evidence, stipulations, and testimony presented in this matter it is determined that the 16th Century Guesthouse and the land on which it stands was primarily used for charitable and exempt purposes during the period May 29, 1998, through December 31, 1998. The office, public restrooms, and utility portion of the Visitor's Center, which totaled 30.6% of the square feet of the building, were primarily used for charitable or exempt purposes during the period May 29, 1998, through December 31, 1998. In addition 30.6% of the of the land on which the Visitor's Center stands, located on Winnebago County Parcel Index No. 12-18-151-001 (Part of) was primarily used for charitable and exempt purposes during the period May 29, 1998, through December 31, 1998. The gift shop and the storage space for the gift shop located in the Visitor's Center, which totaled 69.4% of the square feet of the Visitor's Center, was not primarily used for charitable purposes during the period May 29, 1998, through December 31, 1998. In addition, 69.4% of the land on which the Visitor's Center stands was not used for primarily charitable purposes during the period May 29, 1998, through December 31, 1998. The Anderson Center and the land on which it stands located on Winnebago County Parcel Index No.

12-18-152-002 (Part of) was not primarily used for charitable purposes during the period May 29, 1998, through December 31, 1998.

It is therefore recommended that the 16th Century Guesthouse be exempt for 59% of the 1998-assessment year. It is further recommended that 30.6% of the Visitor's Center and 30.6% of the land on which it stands be exempt for 59% of the 1998-assessment year. It is also recommended that 69.4% of the Visitor's Center and 69.4% of the land on which it stands remain on the tax rolls for the 59% of the 1998-assessment year that the applicant owned Winnebago County Parcel Index No. 12-18-151-001 (Part of). Finally, it is recommended that the Anderson Center and the land on which it stands remain on the tax rolls for the 59% of the 1998-assessment year that the applicant owned Winnebago County Parcel Index No. 12-18-152-002 (Part of).

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter was established by the admission in evidence of Department's Exhibit Nos. 1 through 5.

2. The applicant filed the Application for Property Tax Exemption To Board of Review concerning the three parcels here in issue with the Winnebago County Board of Review on November 30, 1998. (Dept. Ex. No. 1)

3. On February 22, 1999, the Winnebago County Board of Review determined that these three parcels qualified for exemption for the period May 29, 1998, through December 31, 1998, and forwarded this recommendation to the Department. (Dept. Ex. No. 1)

4. The Application for Property Tax Exemption To Board of Review aforesaid lists as the third parcel in issue Winnebago County Parcel Index No. 12-16-152-01. This is incorrect. The correct parcel number for this parcel is Winnebago County Parcel Index No. 12-18-152-001. (Jt. Stip. No. 2)

5. On April 1, 1999, the Department approved the exemption of the three parcels here in issue for 59% of the 1998-assessment year except for the Anderson Center and site, the Visitor's

Center and site, and the 16th Century Guesthouse and site, which were not in exempt use. (Dept. Ex. No. 2)

6. The applicant acquired the three parcels here in issue pursuant to a trustee's deed dated May 29, 1998. (App. Ex. No. 6)

7. The applicant was incorporated pursuant to the General Not For Profit Corporation Act of Illinois, on November 7, 1997, for purposes which among others included the following:

The purposes of the corporation are to operate exclusively for charitable, scientific or educational purposes within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended to support the Rockford Rotary Charitable Association's underlying mission to improve the social welfare of the local community including making educational and recreational opportunities available to the public, and the world community by promoting world peace through understanding, (App. Ex. No. 1)

8. The applicant is exempt from federal income tax pursuant to Internal Revenue Code Section 501(c)(3). (App. Ex. No. 3)

9. The applicant is an "institution of public charity" as that term is used in the Illinois Property Tax Code, 35 **ILCS** 200/15-65. The applicant is organized and operated for exclusively charitable purposes. (Jt. Stip. Nos. 42 & 43)

10. During 1998 the admission charge to visit the applicant's gardens was \$4.00 for adults, \$3.00 for senior citizens, and \$2.00 for students. (Tr. p. 136)

11. The Department and the Applicant stipulated that the applicant makes its facilities available without charge to local not-for-profit organizations dealing with at-risk youth, whether because of substance abuse problems or interaction with the criminal justice system. (Jt. Stip. No. 33)

12. The applicant offered no evidence as to when or how the admission charge was ever waived or reduced during 1998. The applicant did present evidence that the applicant had a policy that admission to the gardens was free on the last Thursday of each month during the operating season. However this free admission policy provided that it excluded rentals, tours,

and special events. This policy was advertised in the Rockford Register Star and posted at the ticketing booth. (App. Ex. 9)

13. The applicant's season runs from May 1 through October 31 of each year. The applicant's operating hours during the 1998 season were from 10:00 a.m. to 4:00 p.m. Monday through Saturday and from 12:00 p.m. to 4:00 p.m. on Sundays. (Jt. Stip. Nos. 21 & 22)

14. The Anderson Center is a one level building which contains one large open space, a small kitchen, storage areas, and restrooms. The building is elevated and supported underneath so that it is one level above the ground. There is an elevator at one end so that it is handicapped accessible. (Tr. pp. 64, 107 & 108, Appl. Ex. 37)

15. In the large open space there are several bookshelves containing books on Japanese culture, Japanese architecture, and Japanese history. These bookshelves and the items thereon are referred to as the resource center or library. The resource center is alleged to be available to the public. However no evidence or testimony was presented as to the terms or conditions of the use of these items by the public. (Tr. pp. 63 & 64)

16. The applicant submitted an exhibit identified as Appendix Exhibit No. 26 which is a list of all the uses of the Anderson Center from June 1, 1998, through October 31, 1998. A large number of these uses were for classes conducted by the applicant or for school field trips to visit the applicant's gardens. The children's classes included origami and Japanese craft classes. The adult classes included Japanese crafts and horticulture classes. The applicant charged tuition fees for all of its classes to both children and adults who took the classes. The applicant also charged for the school field trips. The school field trips included a garden tour and instruction in Japanese culture and crafts. The instruction sessions as well as the classes were taught in the Anderson Center. The applicant charged groups who used the Anderson Center for meetings. The only organization which used the Anderson Center that did not appear to have paid during 1998, was the single's volunteer network. No evidence or testimony was offered concerning the nature of or activities of the single's volunteer network. (Appl. Ex. Nos. 32, 33, 35, & 25)

17. The applicant in its 1998 audited statement included a figure of \$13,841.00 which was identified as rental revenue. This figure included not only income from renting the Anderson Center to outside groups but also income from the classes and field trips. (Tr. p. 120)

18. The 16th Century Sukiya style guesthouse is located in applicant's gardens. It is essentially a museum piece. It includes paper doors on frames that slide back and forth. There are no screws or nails in its construction. It was the applicant's original intent to use it for special fund raising dinners. It was only used for six or seven meals during 1998. The board of trustees then determined that because its construction was so fragile that it would only be used during 1999 and later years as a museum structure in the garden. The guesthouse was not used for overnight accommodations during 1998. (Tr. pp. 48-51, 124-126, 137, Jt. Stip. No. 82)

19. There is a glass wall across the end of the guesthouse that allows visitors to the garden to view the interior of the structure. There is a room on the floor plan of the guesthouse that was identified as the owner's private room. The owner's private room during 1998 was used for a time as the executive director's office. (Tr. pp. 124-126, App. Ex. 28)

20. The Visitor's Center contains two offices that were used as the administrative offices of the applicant during 1998. The Visitor's Center also contained three public restrooms, which were the only public restrooms in the garden during 1998. In addition the Visitor's Center contained a storage area for the gift shop and a gift shop. On the North side of the gift shop area was located the admission counter where the admission fees were paid by the visitors. (Tr. pp. 56-59, 94-96, Appl. Ex. No. 36)

21. During 1998, the Visitor's Center contained public restrooms which constituted 10.5 % of the square feet of the building, the administrative offices which constituted 14.3 % of the square feet of the building, and the utility room which constituted 5.8% of the square feet of the building. The foregoing areas totaled 30.6% of the square feet of the building. The Visitor's Center also included the gift shop which constituted 48.7% of the square feet of the building, and storage space for the gift shop which constituted 20.7% of the square feet of the building. The

gift shop and the storage space for the gift shop totaled 69.4% square feet of the building. (Jt. Stip. Nos. 72, 73, & 74)

22. A person wishing to visit the applicant's garden would enter the Visitor's Center through one door and exit through another. The applicant used the Visitor's Center to collect the admission fees and to control the flow of persons into the garden. If a large group of visitors arrived at one time, the applicant collected the admission fees and allowed the visitors to enter the garden a few persons at a time. (Tr. pp.56-58)

23. The items sold in the gift shop were purchased from wholesalers and resold in the gift shop. During 1998 the gross revenues from the gift shop sales were \$1383.00. (Tr. pp. 101-102, 137)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Concerning charitable organizations, 35 ILCS 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v.

Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). From the foregoing cases it is clear that the burden of proof is on the one seeking the exemption to establish that it is entitled to the exemption.

The Department has determined and it has been stipulated by the Department and the applicant that the applicant owns the parcels here in issue and that the applicant is a charitable organization.

To qualify for an exemption from taxation as a charity, the Courts have determined that an applicant must demonstrate not only that the property is owned by a charitable organization but also that it must be used for charitable purposes. Fairview Haven v. Department of Revenue, 153 Ill.App.3d 763 (4th Dist. 1987); and Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978).

The issues in this matter then include whether the 16th Century Guesthouse and the land on which it stands, the Visitor's Center and the land on which it stands, and the Anderson Center and the land on which it stands were primarily used for charitable purposes during the period May 29, 1998, through December 31, 1998, the portion of 1998 that the applicant owned those parcels.

Both the Winnebago County Board of Review and the Department have granted exemptions to the applicant for the gardens for the portion of the 1998-assessment year that the applicant owned these parcels. During 1998 the 16th Century Guesthouse was primarily used as

a garden structure. The style and architecture of this building was available for viewing from outside the building through the glass wall installed at the end of the structure. During 1998, there were two incidental uses of this building. The first was as the location of the applicant's executive director's office. The administrative offices of an exempt charitable organization may qualify for exemption from property tax. Evangelical Hospital Association v. Novak, 125 Ill.App.3d 439 (2nd Dist. 1984). The second was as the location of several dinners for substantial donors to the applicant. Where the property as a whole was used for both exempt and nonexempt purposes, it will qualify for exemption only if the exempt use is the primary use, and the nonexempt use is merely incidental. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971) and also MacMurray College v. Wright, 38 Ill.2d 272 (1967). I therefore conclude based on the evidence in this matter that the primary use of the 16th Century Guesthouse during 1998 was for viewing by visitors touring the garden and also as the administrative office of the executive director, both of which were exempt uses. I also conclude that the six or so meals for donors were merely incidental uses of this guesthouse.

During the period May 29, 1998, through December 31, 1998, 30.6% of the square feet of the Visitor's Center was used for public restrooms by the visitors to the gardens, as administrative offices of the applicant, and as a utility area of the applicant. The public restrooms of the garden qualify for exemption as being reasonably necessary for the accommodation of the public at the gardens. See MacMurray College v. Wright, 38 Ill.2d 272 (1967). The administrative offices of the applicant also qualify for exemption. See Evangelical Hospital Association v. Novak, 125 Ill."App.3d 439 (2nd Dist. 1984). The Visitor's Center also included the gift shop and the storage space for the inventory of the gift shop which totaled 69.4% of the square feet of the Visitor's Center building. In his brief, the attorney for the applicant cited the case of Highland Park Women's Club v. Department of Revenue, 206 Ill.App. 3d 447 (2nd Dist. 1991) in support of his assertion that the area attributable to the gift shop was incidental to the applicant's charitable activities. In the Highland Park Women's Club case the Appellate Court determined that a gift shop in relation to the 36 acre Ravinia Park parcel was

merely incidental. In that case the Court was distinguishing its earlier decision in Salvation Army v. Department of Revenue, 206 Ill.App. 3d. 447 (2nd Dist, 1991) in which it held that a Salvation Army Thrift Shop did not qualify for exemption because the entire building was being used for profit.

In this case the applicant's attorney's reliance on Highland Park Women's Club v. Department of Revenue, *supra* is without merit, since a total of 69.4% of the Visitor's Center was being used as the gift shop. That percentage most certainly is more than an incidental use of the Visitor's Center building. All of the items sold in the gift shop were purchased by the applicant from wholesalers and resold in the gift shop for profit. In fact, during 1998 the applicant's gross revenues from the gift shop sales were \$1,383.00. It should be noted that the Illinois Courts have consistently held that the use of property to produce income is not an exempt use, even though the net income is used for exempt purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). *See also* Salvation Army v. Department of Revenue, *supra*., leave to appeal denied. It should also be noted that if property, however owned, is let for a return, it is used for profit and so far as its liability for taxes is concerned it is immaterial, whether the owner makes a profit, or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934).

In a situation such as here, where an identifiable portion of a property was used for an exempt purpose, while the remainder was used primarily for nonexempt purposes, the Illinois Courts have held that the portion used for exempt purposes qualified for exemption, and the remainder did not qualify. City of Mattoon v. Graham, 386 Ill. 180 (1944); Highland Park Hospital v. Department of Revenue, 155 Ill.App.3d 272 (2nd Dist. 1987); and Fairview Haven v. Dept. of Revenue, 153 Ill.App.3d 763 (4th Dist 1987). I therefore conclude that 69.4% of the square feet of the Visitor's Center and 69.4% of the land on which it stands was used by the applicant for profit and consequently did not qualify for exemption during the period May 29, 1998, through December 31, 1998. I also conclude that 30.6% of the square feet of the Visitor's

Center and 30.6% of the land on which it stands was used for charitable or exempt purposes during the period May 29, 1998, through December 31, 1998.

The evidence indicates that each student and adult who attended the classes conducted by the applicant at the Anderson Center during 1998 had paid the tuition fees to attend the classes. No evidence was offered by the applicant that any tuition fees were waived or reduced. The evidence also indicated that each of the school field trips paid the fees which the applicant charged. The only group that used the Anderson Center that did not pay a fee to use it during 1998 was the single's volunteer network.

The applicant's 1998 audited statement includes an item of revenue identified as rental revenue in the amount of \$13,841.00. The testimony concerning this figure indicates that it includes not only rental income from the rental of the meeting facilities in the Anderson Center, but also tuition fees for the adult and children's classes, and the income from the field trips operated by the applicant. It is significant that the applicant recognized that all of these groups met in or used the Anderson Center for a use which generated \$13,841.00 in revenue during 1998. As set forth above, the Illinois Courts have consistently held that the use of property to produce income is not an exempt use, even though the net income is used for exempt purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). *See also* Salvation Army v. Department of Revenue, 206 Ill.App.3d 447 (2nd Dist, 1991), leave to appeal denied. It should also be noted that if property, however owned, is let for a return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial, whether the owner makes a profit, or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. (1934). I therefore conclude that the applicant primarily used the Anderson Center for profit during the period May 29, 1998, through December 31, 1998. Consequently, I conclude that the Anderson Center and the land on which it was located did not qualify for exemption during the period May 29, 1998, through December 31, 1998.

It is therefore recommended that the 16th Century Guesthouse be exempt from real estate taxation for 59% of the 1998-assessment year. It is further recommended that 30.6% of the

Visitor's Center and 30.6% of the land on which it stands be exempt from real estate taxation for 59% of the 1998-assessment year.

It is also recommended that 69.4% of the Visitor's Center and 69.4% of the land on which it stands remain on the tax rolls for the 59% of the 1998-assessment year that the applicant owned Winnebago County Parcel Index No. 12-18-151-001 (Part of). Finally, it is recommended that the Anderson Center and the land on which it stands remain on the tax rolls for the 59% of the 1998-assessment year that the applicant owned Winnebago County Parcel Index No. 12-18-152-002 (Part of).

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
April 24, 2001